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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,247	03/30/2001	Harmut Kratzke	022701-906	5390

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EXAMINER

PIERCE, JEREMY R

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 04/30/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/719,247	KRATZKE ET AL.
	Examiner Jeremy R. Pierce	Art Unit 1771
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --		
Period for Reply		
<p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 		
Status		
<p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>03 April 2003</u>.</p> <p>2a)<input type="checkbox"/> This action is FINAL. 2b)<input checked="" type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>		
Disposition of Claims		
<p>4)<input checked="" type="checkbox"/> Claim(s) <u>1-16</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5)<input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6)<input checked="" type="checkbox"/> Claim(s) <u>1-16</u> is/are rejected.</p> <p>7)<input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8)<input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.</p>		
Application Papers		
<p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input type="checkbox"/> The drawing(s) filed on _____ is/are: a)<input type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p>11)<input type="checkbox"/> The proposed drawing correction filed on _____ is: a)<input type="checkbox"/> approved b)<input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.</p> <p>12)<input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>		
Priority under 35 U.S.C. §§ 119 and 120		
<p>13)<input checked="" type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input checked="" type="checkbox"/> All b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <p>1.<input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p>2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p>3.<input checked="" type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p> <p>* See the attached detailed Office action for a list of the certified copies not received.</p> <p>14)<input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).</p> <p>a)<input type="checkbox"/> The translation of the foreign language provisional application has been received.</p> <p>15)<input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.</p>		
Attachment(s)		
<p>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.</p> <p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____.</p>		

DETAILED ACTION

Response to Amendment

1. Amendment B has been filed on April 3, 2003 as Paper No. 8. Claims 1 and 13 have been amended. New claims 15 and 16 have been added. Claims 1-16 are currently pending. The amendment is sufficient to withdraw the 35 USC 112 and 102 rejections set forth in sections 3, 5, and 7 of the last Office Action.
2. The Hwang (U.S. Patent No. 4,514,455) reference is withdrawn because Applicant defines a three-dimensional crimp to be "a crimp which lies at least in two cutting planes and which also generate pigtail-shaped loops or curls in the fiber." This reading of a "three-dimensional crimp" renders the claims outside the scope of Hwang.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the nonwoven fabric "forms a napped textile surface." This is indefinite because it is not clear whether the claimed nonwoven fabric is napped or whether the nonwoven fabric, in and of itself, forms a napped textile surface. Is this claim reciting a natural characteristic of the nonwoven fabric of the present invention? If

so, it must be assumed that other nonwoven fabrics of the prior art that meet the physical limitations of the claims naturally "form a napped textile surface."

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-10 and 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Gehrig et al. (U.S. Patent No. 3,929,542).

Gehrig et al. disclose a nonwoven web made from filaments containing helical crimps (column 1, lines 59-68). The yarn count of the filaments can be between 1 and 100 dtex (column 7, line 39). With regard to claims 2 and 16, the filaments can be polyamide (column 6, lines 64-68). With regard to claim 3, Gehrig et al. offer examples of polyamides including caprolactam, adipic acid, sebacic acids, and diamines, which are the precursors for forming the various claimed nylons. With regard to claims 4 and 5, Gehrig et al. describe crimping via pneumatic crimping (column 2, lines 15-55). With

regard to claims 8 and 14, the nonwoven web is used in artificial leather and various articles of clothing.

8. Claims 1, 2, and 7-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Scherbel (U.S. Patent No. 5,922,433).

Scherbel discloses a nonwoven fabric having fibers with three-dimensional crimps (column 3, line 47). The fineness of the fibers can range between 0.5 and 12 dtex (column 3, lines 62-63). With regard to claims 2 and 16, the fibers may be polyamide (Abstract). With regard to claims 8 and 14, the nonwoven is used in garments (Abstract). With regard to claim 10, the nonwoven fabric is napped (column 3, line 41). With regard to claim 11, the weight of the nonwoven fabrics can range from 30 to 80 grams per square meter (column 1, lines 56-57).

9. Claims 1, 2, and 6-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Carey (U.S. Patent No. 4,551,378).

Carey discloses a nonwoven fabric having three-dimensional coil-like crimps (column 3, line 13). The fibers have a denier between 0.5 and 5 (column 4, lines 1-2). With regard to claims 2 and 16, Carey discloses using polyamide (column 3, line 39). With regard to claims 8 and 14, the article of Carey is used in garments (column 1, lines 61-64). With regard to claim 11, Carey discloses the fabric weight to be between 40 and 300 grams per square meter (column 4, lines 26-27).

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10. Claims 4 and 5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Carey.

Carey does not disclose pneumatic crimping. However, this is a process limitation in a claim directed to a product. Carey meets all the physical limitations of the claimed product. Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983).

11. Claims 4 and 5 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Scherbel.

Scherbel does not disclose pneumatic crimping. However, this is a process limitation in a claim directed to a product. Scherbel meets all the physical limitations of the claimed product. Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product.

Claim Rejections - 35 USC § 103

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carey.

Carey does not disclose using the various nylons in claim 3. Carey teaches that polyamide can be used in the invention, but does not disclose any specific type of polyamide. In practicing the invention, it would be necessary for a person having ordinary skill in the art to select a known polyamide in order to make the invention work. It would have been obvious to one having ordinary skill in the art to select the claimed nylons for use in the invention of Carey, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

13. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scherbel.

Scherbel does not disclose using the various nylons in claim 3. Scherbel teaches that polyamide can be used in the invention, but does not disclose any specific type of polyamide. In practicing the invention, it would be necessary for a person having ordinary skill in the art to select a known polyamide in order to make the invention work. It would have been obvious to one having ordinary skill in the art to select the claimed nylons for use in the invention of Scherbel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use.

Response to Arguments

14. Applicant's arguments filed in Paper No. 8 have been fully considered but they are not persuasive.

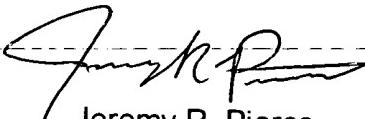
15. Applicant argues that Gehrig is directed to continuous filaments, as opposed to the present claims, which comprises at least one non-woven surface layer of fibers having three-dimensional crimp. However, the present claim language does not preclude continuous filaments.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce
Examiner
Art Unit 1771

April 28, 2003



ELIZABETH M. COLE
PRIMARY EXAMINER